

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97251; File No. SR-NYSE-2023-17)

April 4, 2023

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.02 of the NYSE Listed Company Manual With Respect to the Qualification of Eligible Portfolio Companies of an Investment Management Entity for the Investment Management Entity Group Fee Discount

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 29, 2023, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the “Manual”) to amend the provisions with respect to the qualification of Eligible Portfolio Companies of an Investment Management Entity for the Investment Management Entity Group Fee Discount. In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year, an issuer must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year that it meets the ownership requirements specified above. The Exchange proposes to extend the application of the Investment Management Entity Group Discount to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the time of listing that it qualifies as an Eligible

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Portfolio Company of an Investment Management Entity. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 902.02 of the Manual includes a subsection entitled “Investment Management Entity Group Fee Discount.” For purposes of this subsection, an Investment Management Entity is a listed company that manages private investment vehicles not registered under the Investment Company Act. An “Eligible Portfolio Company” of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company’s initial listing. The Exchange applies a fee discount applicable only to an Investment Management Entity and its Eligible Portfolio Companies (the “Investment Management Entity Group Fee Discount”). In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies continue to have its fees capped by the applicable company’s individual Total Maximum Fee of \$500,000. The Investment Management Entity Group Fee Discount (i) is limited to annual fees and (ii) represents a 50%

discount on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or more Eligible Portfolio Companies. In order to qualify for the Investment Management Entity Group Fee Discount in any calendar year, an issuer must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year that it meets the ownership requirements specified above.

For the reasons set forth below under “Statutory Basis,” the Exchange proposes to extend the application of the Investment Management Entity Group Discount to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the time of listing that it qualifies as an Eligible Portfolio Company of an Investment Management Entity.

The Exchange also proposes to make some non-substantive changes to Section 902.02 to remove provisions that are no longer needed, as they do not apply by their terms to any calendar year starting on or after January 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(4)⁴ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ in that it is designed to promote just and equitable principles of trade, to

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78f(b)(5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange established the Investment Management Entity Group Fee Discount⁶ because, among other reasons, in the Exchange's experience, an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process. By comparison, the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity. The Exchange believes it is reasonable to share some of the cost savings derived from its relationship with an Investment Management Entity with the Investment Management Entity and its listed portfolio companies. Because these cost savings also exist in the first partial year of listing of an Eligible Portfolio Company, the Exchange proposes to extend the application of the Investment Management Entity Group Fee Discount to the annual fees such companies are billed in their first partial year of listing, provided that the newly-listed company is able to demonstrate at the time of listing that it qualifies as an Eligible Portfolio Company of an Investment Management Entity.

⁶ See Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (SR-NYSE-2016-70).

The Exchange also proposes to make non-substantive changes to Section 902.02 to remove provisions that are no longer needed, as they do not apply by their terms to any calendar year starting on or after January 1, 2021.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee reduction will be applicable to all similarly situated issuers on the same basis.

The Exchange believes that the proposed fee limitation will not have any meaningful effect on the competition among issuers listed on the Exchange. The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2023-17 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2023-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

⁷ 15 U.S.C. 78s(b)(3)(A).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2023-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).